

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LINDWALT CONSTRUCTION¹

Employer

And

UNITED ORDER OF BRICKLAYERS AND STONE MASONS, LOCAL 21, BRICKLAYERS
AND ALLIED CRAFTWORKERS

Petitioner

Case 13-RC-20713

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

On January 18, 2002, the Petitioner filed a representation petition seeking to represent the following unit of the Employer's employees:

¹ The names of the parties appear as amended at the hearing.

² The positions of the parties as stated at the hearing and in their briefs have been carefully considered.

³ The Employer is a corporation engaged in the construction business as a general contractor.

All full-time bricklayers employed by the Employer at its facility currently located at 3806 Standish Road, Marengo, Illinois; excluding all office staff, truck drivers, mason tenders and general laborers, guards and supervisors.

The Employer takes the position that it does not employ full-time bricklayers and, therefore, that an appropriate unit of bricklayers does not exist at this time. Because I find that the record demonstrates that the Employer does not regularly employ bricklayers, I will dismiss the petition.

Facts:

Owner Walter Sdrenka has operated Lindwalt Construction, Inc. since 1981. At the time of the hearing, the company employed eight employees, including the owner and his sons Mark Sdrenka and Walter S. Sdrenka, one general laborer/truck driver, three general laborers, and one carpenter. The Employer subcontracts electrical, plumbing, HVC, and drywall work at its job sites. During the 3 years preceding December 2001, the Employer has not hired bricklayers or subcontracted any of its masonry work. Rather, the record shows the owner is an experienced bricklayer, and, with the assistance of his sons and occasionally one of the laborers, has performed such work as necessary.

About September 2001, the Employer began working on a renovation project at the Saddle and Cycle Club located 900 W. Foster Avenue in Chicago, Illinois. The deadline for completion of the project was April 15 to May 2002. In December 2001, the job site had been closed for an approximate 2-week period after asbestos was discovered on the site and also because of weather related interference. Accordingly, the Employer placed an advertisement in the newspaper for bricklayers to begin work immediately. Sdrenka testified that he intended to hire bricklayers to lay blocks to support roofing trusses that were scheduled to be installed on January 15, 2002.

Richard Rasmussen responded to the Employer's newspaper advertisement by telephone and was instructed to report to the 900 W. Foster Avenue job site, where on January 3, 2002, he completed an application and began his employment. Rasmussen was immediately assigned the task of setting cinder blocks. On January 9, 2002, Rasmussen brought Edward Kochaney to the job site where he was immediately hired and put to work setting blocks. Kochaney did not complete an employment application but a couple of days later provided the Employer with his name, address and social security number written on a piece of paper. Rasmussen and Kochaney each earned \$25.00 an hour, and, like all of the Employer's other employees, did not receive any employment benefits. Both employees had access to the same facilities as other employees. With the exception of an approximate 2-day period when the Employer assigned Rasmussen to brick laying duties, both employees set blocks during their entire employment with the Employer.

On Tuesday, January 15, 2002, the Petitioner began picketing the Employer for recognition. Upon arriving at the jobsite, the Employer paid Kochaney for his work to that date.⁴ When the Employer paid Kochaney, Rasmussen informed the Employer that he was going out on strike

⁴ The Employer's normal payday is on Friday.

and would honor the picket line. The parties dispute how much masonry work remained to be completed at that time; the Employer contends that it had 2-3 days of block work remaining and 8-10 days of brick work remaining,⁵ while the Petitioner takes the position that there was approximately 20 days of masonry work available for its bricklaying employees to perform. According to the Employer's owner Walter Sdrenka, on January 15, he intended to allow Rasmussen to finish the remaining block work, and complete the brickwork himself.

Analysis

As set forth previously, Petitioner seeks to represent a unit consisting of the Employer full-time bricklayers. The Employer takes the position that it does not employ full-time bricklayers and therefore no appropriate bricklayer unit exists.

While the witnesses dispute whether Sdrenka informed Rasmussen and Kochaney that they were being hired on a temporary basis, the record is clear that such was his intent. Indeed, the Employer had not employed any bricklayers for at least three years before hiring Rasmussen. Because the Employer is engaged in construction, I find that the eligibility of Rasmussen and Kochaney is governed by the *Daniel* formula. *Daniel Construction Co.*, 133 NLRB 264 (1961); as modified in *Daniel Construction Co.*, 167 NLRB 1078 (1967); see also, *Steiny & Co.*, 308 NLRB 1323 (1992).⁶

The *Daniel* formula provides that employees are eligible to vote if they have been employed for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. *Steiny & Co.*, 308 NLRB at 1326, 1327 n.13. Applying that formula, I find that Kochaney is not eligible to vote.

The parties dispute how much Rasmussen would have been employed to complete his work on the project. However, I find that resolution of that dispute is not necessary. Even assuming that Rasmussen would have satisfied the *Daniel* formula for eligibility, he would be the only person in the bargaining unit. However, it is Board policy not to certify a representative for bargaining purposes in a unit consisting of one employee. *Roman Catholic Orphan Asylum*, 229 NLRB 215 (1977). Accordingly, I shall dismiss Petitioner's petition in this matter.

⁵ The Employer was awaiting a delivery of bricks, which would be put front of the blocks. The scheduled delivery for the bricks was on or around January 15, 2002.

⁶ The Employer contends, citing *Pen Mar Packaging Corp.*, 261 NLRB 874 (1982), that temporary employees are ineligible to be included in any bargaining unit. But the Board has long noted that because the construction industry is different from many other industries in the way it hires and lays off employees, it would apply different rules in determining voting eligibility. The Employer's cases, therefore, are inapposite.

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by May 2, 2002.

DATED April 18, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

362-3350-6000

Voter Eligibility - Construction Industry